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No. 88-1735

IN THE

Supreme Court of the United States

BILLY RAY APPERSON,
Petitioner,

vs.

FLEET CARRIER CORP.,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CHARFOOS, REITER, PETERSON
& HOLMQUIST, P.C.

C. John Holmquist, Jr. (P-25996)
Counsel for Respondent
30300 Telegraph Road, Suite 118
Birmingham, Michigan 48010
(313) 644-2213

CASILLAS PRESS, INC. – 1717 K STREET NW WASHINGTON, DC 20036 – 223-1220

LISTING OF COMPANIES AND AFFILIATES OF RESPONDENT

Pursuant to Rule 28.1, Respondent sets forth the following information. Respondent Fleet Carrier Corporation is a subsidiary of the Automotive Carrier Division of Ryder System, Inc.

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Respondent Fleet Carrier Corporation respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Sixth Circuit's opinion in this case. That opinion is not reported and is reprinted as Appendix A at pages 1(a)-12(a) of the Appendix to the Petition for Writ of Certiorari.

COUNTERSTATEMENT OF FACTS

A. Facts.

Respondent Fleet Carrier Corporation ("Respondent" or "Fleet") adopts the discussion of facts set forth in the District Court's Memorandum Opinion and Order found in Appendix

B at App. 13a-15a[1] and in the Court of Appeals' decision found at App. 2a-5a.

B. Proceedings Below.

The Petitioner filed his Complaint in District Court on October 30, 1986, more than three months after his collective bargaining representative notified him of the arbitration decision denying his grievance and upholding his discharge by the company. After answering the Complaint, Fleet filed a Motion for Summary Judgment which was supported with affidavits from representatives of the company and of Teamsters Local 614 concerning the discharge and subsequent arbitration of the grievance challenging the company's action.

The District Court stated that the facts were not in dispute and that the parties differed as to the law to be applied to the issue of the appropriate limitations period. The court noted that Fleet asserted that the lawsuit was an action for the vacation of an arbitration award under Section 301 of the Labor Management Act ("LMRA"), 29 U.S.C. Section 185(a) which should be governed by the three-month statute of limitations set forth in the Federal Arbitration Act, 9 U.S.C. Section 12. The Petitioner contended that the action was a "hybrid" Section 301 action and that the sixth-month statute of limitations contained in Section 10(b) of the National Labor Relations Act, 29 U.S.C. 160(b) should apply (App. 14a-15a).

The District Court rejected Apperson's contention that his case was properly classified as a "hybrid" action under Section 301. The court noted that the Complaint did not allege that the local union breached its duty of fair representation in the processing of the grievance protesting the discharge

[1]References to the Appendices to the Petition are designated as "App. ____a."

and concluded that, in the absence of a showing or at least an allegation of a breach of the union's duty of fair representation, a hybrid Section 301 case has not been presented (App. 17a-18a). The court considered the Petitioner's attempt to fit the facts of the case into the Section 301 "hybrid" mold and concluded that the Petitioner had not demonstrated that he had, in fact, a hybrid Section 301 case. The court noted that the primary remedy sought was the vacation of the arbitration award, and the court concluded, apart from the issue of the existence of a hybrid action, that the case would be barred by the Arbitration Act's three-month statute of limitations (9 U.S.C. Section 12) (App. 18a).

The Court of Appeals acknowledged that the District Court held that an employee could not state a "hybrid" cause of action under Section 301 of the LMRA without alleging that the union had breached its duty of fair representation (App. 4a). The panel majority opinion did not reach the statute of limitations issue because of its agreement with the District Court that the Petitioner had failed to state a cause of action (App. 4a).

In his brief to the Court of Appeals (Brief of Appellant, 9-11), the Petitioner addressed at length his unique definition of a "hybrid" action and acknowledged that his use of the term was not the same as was recognized by the District Court or as commonly understood in labor relations. The panel majority stated that the hybrid section 301 action has two components and that the Petitioner had not pled nor argued that the local union violated its duty of fair representation (App. 7a). The panel majority noted that counsel for Petitioner stated that the case "bore a familiar resemblance" to the typical hybrid Section 301 case, but the panel majority concluded that no cause of action had been stated under Section 301 under the circumstances of the case. The lower court's decision was affirmed (App. 7a-8a).

REASONS FOR DENYING THE WRIT

1. Neither the decision below nor the record raises the Question Presented in the Petition.

The sole question presented in the Petition is whether an action by an individual to vacate an arbitration award where the union has fairly represented the individual can be maintained where there is bias alleged against the arbitral panel and/or the employer's conduct in the arbitration amounted to a repudiation of the grievance procedure (Petition, p. (i)). Unfortunately, the issue was not similarly framed before the District Court or in the Court of Appeals. The terminology used by the Petitioner resulted in a semantic quagmire over the meaning of "hybrid."

The District Court correctly noted that Fleet maintained that the lawsuit was an action for the vacation of an arbitration award under Section 301 which should be governed by the three-month statute of limitations under 9 U.S.C. Section 12. Fleet also argued that the action was not properly a "hybrid" Section 301 action. Petitioner alleged that the action was a hybrid 301 action and that the six-month statute of limitations contained in Section 10(b) of the NLRA, 28 U.S.C. Section 16(b) should apply. Having framed the issue, the District Court correctly noted that the petitioner had not stated a hybrid Section 301 claim because there was no allegation of the breach of the duty of fair representation.

The panel majority framed the issue as whether an employee fairly represented by a union may state a "hybrid" cause of action under Section 301 without alleging that the union had breached its duty of fair representation (App. 2a). The panel majority agreed with the District Court that an employee cannot state such a claim.

It is important to recognize that Petitioner utilized the "hybrid" term to take advantage of this Court's earlier decision in *DelCostello* concerning the appropriate statute of limitations. A true "hybrid" action is governed by the six-month limitations period set forth in Section 10(b). In his brief to the Court of Appeals, the Petitioner stated that the issue on appeal was whether a claim for an employee's discharge has been stated under Section 301; and if so, whether a six-month limitation applies so that the action was timely filed; and if not, whether it was timely filed under the three-month limitation of the Federal Arbitration Act (Appellant's Brief, 1). The preoccupation with the meaning and definition of "hybrid" was a direct result of Petitioner's attempt to give a different meaning to this term than has been understood and uniformly applied by the courts in the labor relations context. See, e.g. *DelCostello*, 462 U.S. at 165. Petitioner argued that hybrid should be used in the labor context simply to be a combination of two claims in one suit; one seeking to remedy a contract breach and the other seeking to avoid the exclusivity of the contract remedies (Appellant's Brief, 10).[2]

To the extent that any conflict arises out of the Court of Appeals' decision, such conflict does so only because of the semantics used by Petitioner. The particular facts of this case as posed by the Petitioner led the District Court and the Court of Appeals to frame the issue as whether Petitioner had stated a claim which would be recognized as a hybrid action under Section 301. The decisions are correct with respect to their treatment of that issue. The conflict Petitioner asserts is more apparent than real. There is no important question of federal

[2]At the hearing on the motion, the District Court stated that it was having difficulty understanding the Petitioner's hybrid Section 301 action and that this difficulty is why the Court wanted the Petitioner's counsel to "express it more fully on the record" than what he had done in his brief (Joint Appendix 86(a)).

law for this Court to settle nor is there any reason to grant Petitioner's request. The case does not present facts upon which to resolve the question presented; the uniqueness of its facts precludes review by this Court.

2. The decision below is correct notwithstanding the Question Presented.

The District Court's decision set forth an alternate basis supporting the granting of summary judgment, namely that Petitioner's claim would be time barred under the three-month limitations period set forth in the United States Arbitration Act 9 U.S.C. Section 12 (App. 18a).

The statute of limitations issue was not addressed in the Court of Appeals. The majority noted that the District Court had borrowed the limitations period set forth in 9 U.S.C. Section 12 but did not reach the issue because of its holding that no cause of action had been stated (App. 4a). Similarly, the dissent did not discuss whether the judgment could have been affirmed on the statute of limitations ground (App. 12a).

The District Court's decision to borrow the three-month limitations period is consistent with this Court's decisions in *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. ____, 98 L.Ed. 2d 286 (1987) and in *DelCostello v. Teamsters*, 462 U.S. 151 (1983). Other courts have "borrowed" the three-month limitations period as the most appropriate limitations period under factual situations similar to the present case where a party sought to vacate an arbitration award. *See, e.g., American Postal Workers Union v. United States Postal Service*, 823 F.2d 466 (11th Cir. 1987); *Occidental Chemical Corp. v. Local 820, International Chemical Workers Union*, 853 F.2d 1310 (6th Cir. 1988); *Bacashihua v. United States Postal Service*, 859 F.2d 402 (6th Cir. 1988). The Court of Appeals undoubtedly would have followed its earlier deci-

sions in *Occidental Chemical* and *Bacashihua*. Since the decision below is correct without regard to the issue as framed by the Petitioner, there is no compelling reason for this Court to grant review. There well may be other cases which would present the issue as framed by the Petitioner, but this case does not serve as a proper vehicle for such review.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

CHARFOOS, REITER, PETERSON
& HOLMQUIST, P.C.

C. John Holmquist, Jr. (P-25996)
Counsel for Respondent
30300 Telegraph Road, Suite 118
Birmingham, Michigan 48010
(313) 644-2213

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